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THE SITUATION IN CENTRAL AMERICA:
PROCEDURES FOR THE ESTABLISHMENT
OF A FIRM AND LASTING PEACE AND
PROGRESS IN FASHIONING A REGION
OF PEACE, FREEDOM, DEMOCRACY
AND DEVELOPMENT

SECURITY COUNCIL
Forty-ninth year

Note by the Secretary-General

The attached document contains the report of the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL) covering the period from 1 November 1993 to 28 February 1994. As will be recalled (see S/23999, para. 3), it was decided that the work of ONUSAL in relation to the San José Agreement on Human Rights (A/44/971-S/21541, annex) would continue to be the subject of a separate series of reports.

* A/49/50.

Tenth report of the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador

(1 November 1993-28 February 1994)

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I. INTRODUCTION

1. In order to provide the Secretary-General with a broad overview of developments in the human rights situation in El Salvador during the pre-election period which culminated on 20 March in the elections to the Presidency of the Republic, the collegial bodies and the municipal mayoralties, the first to be held in the country since the peace agreements (S/23501, annex), the present report analyses the period from November 1993 to February 1994.

2. The active verification of human rights is a part of the provisions adopted by the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) in order to implement the peace agreements, which comprise a great number of commitments linked directly or indirectly with the subject of human rights. Verification is substantively carried out in relation to the fulfilment of the San José Agreement on Human Rights, signed on 26 July 1990 (S/21541, annex). This is in addition to human-rights-related commitments which are part of the other political agreements comprising the overall framework of the peace process, especially those involving judicial reform, reforms in the armed forces and the establishment of the National Civil Police, as well as the recommendations made by the Commission on the Truth and those formulated by the Human Rights Division.

3. The ensemble of commitments contained in these agreements and recommendations include several dozen specific objectives which, together, are gradually generating conditions for the enjoyment of human rights in El Salvador which are different from those that existed in the past. In their totality, these human-rights-linked commitments thus constitute the most substantive and most far-reaching process for the promotion and protection of human rights to have been carried out to date in a country which is a Member of the United Nations. This is largely to the credit of the Salvadorian people, the Government - in whose name, given the structure of the State system, the great majority of the commitments have been undertaken - FMLN and the other political forces in the country represented in the National Commission for the Consolidation of Peace (COPAZ), the national organ supervising the execution of the agreements.

4. With this in mind, the Human Rights Division must point out that the specific development of the situation of each one of the rights under verification must be evaluated and interpreted on its merits, and also in the context of the peace process, which is itself the most transcendent and decisive choice ever made in the country's history to build, by means of consensus, dialogue and negotiation, a State based on the rule of law, whose institutions express respect for human rights and the free exercise of democratic life. From the perspective of the international system, it is an entirely new process in the history of United Nations peace-keeping activities, the grandest and vastest operation for the promotion and protection of human rights ever undertaken by any Government with the endorsement and validation of the international community.

II. ANALYSIS OF THE SITUATION FROM NOVEMBER 1993 TO FEBRUARY 1994

A. Overall assessment of the situation

5. In my ninth report to the Secretary-General, I noted that the human rights situation in El Salvador during the months of August, September and October "took a serious turn for the worse between August and October" (A/49/59-S/1994/47, annex, para. 4). In analysing the overall situation, I said that "a composite analysis of developments in the human rights situation during the past 10 months makes it possible to discern two quite distinct phases. The first phase covers the period from January to May, during which the situation evolved unevenly, with strengths and weaknesses; there was a clear downward trend in the commission of such acts as forced disappearance or torture, and an improvement in the overall political [and juridical] situation. The second phase, covering the period from June to October, was marked by a progressive worsening of the situation leading to a grave deterioration of the situation in October, characterized by an upsurge of selective violence against citizens who were openly engaged in politics, as well as death-squad-style murders" (ibid., para. 86).

6. Analysing the situation during the period from August to October, I stated that "the current violence is directed against the democratic political system which has been worked out by the Government and FMLN, with the support of all political forces, with the aim of building up through consensus the rule of law and a stable and functioning democracy. Thus, the acts of political violence which have occurred during the period covered by this report reflect the intransigence of fringe elements attacking the Salvadorian nation as a whole, all national political forces and the democracy proposed in the peace agreements. The Human Rights Division must state that, in the active verification process it has conducted in investigating the cases referred to it, it did not find any indication or evidence of any institutional involvement of the State in these violations. Therefore, it can affirm that they do not compromise the Government as an institution; on the contrary, this selective violence seems to be directed against all democratic political forces, including the Government of El Salvador itself, which, as a party to the agreements to which the substantive obligations of the peace process were assigned, has taken historic steps, together with FMLN and the other political forces in the country, towards the progressive establishment of an effective democratic political system based on the rule of law" (ibid., para. 16).

7. The acts of violence described in the ninth report constituted a sort of decisive test of the vitality of the peace process and of the will of the parties, especially the Government of El Salvador, to ensure that the law is being observed in respect of human rights. The response of the State, society and the international community has been generally positive. It has been expressed, in the first place, in the Government's invitation to foreign investigators (Scotland Yard, the Federal Bureau of Investigation and the Spanish police) to participate in the investigations together with a governmental inter-agency commission so as to further the corresponding police

inquiries. And secondly, by the constructive attitude adopted by the Government, as well as by FMLN, in the process of consultations which led to the organization of the Joint Unit for the Investigation of Illegal Armed Groups having Political Motivations, whose establishment was suggested by the Secretary-General to comply with the relevant recommendation of the Commission on the Truth.

8. The Joint Unit, comprised of Mr. Carlos Mauricio Molina Fonseca, the National Counsel for the Defence of Human Rights, Messrs. José Leandro Echeverría and Juan Jerónimo Castillo, representing the President of the Republic, and Mr. Diego García-Sayán, director of the ONUSAL Human Rights Division, has now begun its activities with the financial collaboration of a group of friendly countries. Its activities are being carried out with the most absolute freedom of action and autonomy; on the level of civil society, the response has also been encouraging since all national sectors, institutions, churches and political forces have expressed their unanimous rejection of any form of violence, especially that which could be politically motivated. In this regard, the candidates for the presidency of the Republic have expressed their intention to support and respect the investigations of the Joint Unit, as well as to implement the peace agreements whatever the outcome of elections.

9. At the same time, the Human Rights Division of ONUSAL proceeded, in accordance with the provisions of the San José Agreement, to carry out the corresponding investigations, especially those connected with the deaths of the FMLN leaders Francisco Vélis Castellanos, Eleno Castro and José Mario López Alvarenga, as well as the attempt perpetrated on 24 February 1994 on the life of Marta Valladares (Nidia Díaz, former commander of FMLN).

10. The investigation into the death of Francisco Vélis Castellanos is not yet complete. Nevertheless, given the characteristics of the crime, the likeliest explanation seems to be that it was politically motivated. Following investigation into the other cases, it has been determined that the murder of Eleno Castro was a criminal act resulting from an altercation and that responsibility can be attributed to common criminals; and that the killing of José Mario López Alvarenga, according to the current status of the investigations, could have been triggered by an unrelated incident, in that the FMLN leader now appears to have been killed when he went to the defence of an elderly woman who was being attacked by common criminals on leaving a bank.

11. The basically encouraging responses to the grave situation of the previous three months, the findings of some of the investigations, and the developments over the course of the four months (November, December, January and February) analysed in this report do not, on the whole, suggest that the grave deterioration described in the ninth report is continuing at the present point in time; rather, the characteristics of the overall trends of the process seem to be reasserting themselves. In sum, the November-February period shows a certain improvement, in contrast to the serious problems warned of in the ninth report.

B. Review of active verification of the human rights situation

1. Right to life

12. The Human Rights Division has repeatedly drawn attention to the complex character of the interrelationships between ordinary crime and complaints of arbitrary or extra-legal executions which have been declared admissible. This points up the need to clarify certain categories of analysis peculiar to international human rights law. In this regard, it seems necessary to reiterate the conceptual elements of the definition of extra-legal or arbitrary executions that is used by the Human Rights Division in its active verification work.

13. An assumption of common understanding can lead one to the mistake of categorizing as extra-legal or arbitrary execution only deaths deliberately caused by the State apparatus with political motivations. Although it is true that such deaths clearly constitute extra-legal or arbitrary executions, or even summary executions, the conceptual approach adopted in the various instruments of the United Nations and in the practices of its different protection mechanisms indicates that the concept is much broader, in that it includes deaths caused by agents of the State without political motivation, due to excessive use of force or to imbalances between the means used to control certain situations and the actual nature of those situations, as well as deaths or killings caused by illegal organizations which may be acting on their own or in association with agents of the State.

14. Applying this comprehensive definition of extra-legal or arbitrary executions to El Salvador necessarily means taking into account certain particular traits that violence, as a social phenomenon, assumes in the transitional period that the country is currently undergoing. Common violence has increased; in many cases, it is carried out in an organized manner by criminal groups, the majority of which have military weapons. In more than a few cases, such criminal groups are made up of former FMLN combatants and former members of the armed forces, who possess military weapons issued only to members of the armed forces. Considering that many bloody acts were committed during the war, especially in local communities, where identification of the perpetrators was likely, it may be assumed that there will be crimes involving a "settling of scores" for acts that occurred during the war. This assumption, which the verification process appears to have confirmed, introduces a factor of greater complexity since there could be murders involving "private political motivation" in which there would not be any active and direct responsibility of the State or of its agents.

15. These factors, which arise as residual effects of the war, could help to explain some murders in which the victims were or had been connected with FMLN or with the armed forces.

16. We are not trying to suggest that all or most of these cases fall into the special category of "private political motivation". As the armed forces themselves affirm, recorded cases of armed forces victims include acts "attributed to common crime, to fortuitous circumstances or to political motivations" (Ministry of Defence report on assaults, murders and killings of

armed forces and national police personnel, December 1993). Nevertheless, it appears to be an explanatory factor which cannot be ignored.

17. Likewise, over the last 7 months, the FMLN has reported 22 murders and 6 attempted murders of members of that political organization; and more than 80 per cent of these cases involved former combatants and core militants.

(a) Deaths resulting from the violation of juridical guarantees and arbitrary or extra-legal executions

18. During the reporting period, 55 complaints of arbitrary or extra-legal executions were declared admissible, which is more than the number registered during the previous period. Active verification has established that a large number of these cases were actually common crimes. Others show signs of political motivation. During the period covered by the present report, there were no further killings similar to those that drew national and international attention in the previous trimester.

19. On 23 December 1993, the ONUSAL Human Rights Division made public the findings of its investigation into the murder of FMLN leader Eleno Castro, noting that "this was a killing that resulted from an argument following a vehicular collision" (see the communication from Human Rights Director in the case of Eleno Castro Guevara, 23 December 1993). A detailed account of the findings is included in an addendum to this report.*

20. In contrast, the investigation into the killing of Ernesto Vélis, also an FMLN leader, has not progressed far enough to have produced substantive data that would permit a provable hypothesis to be established. The work of the Interinstitutional Commission has been leaning towards an investigation based on the supposition that the killing was of an isolated, common criminal nature, but this approach has yet to yield significant results. The hypothesis of a political motivation for the crime has still not been sufficiently investigated. For its part, the Human Rights Division is continuing to pursue its inquiries in the case and is not ruling out any hypothesis, although the possibility of a political motivation seems the most likely. Interestingly enough, Scotland Yard, which participated in the initial phase of the investigation under the auspices of the Interinstitutional Commission created by the Government, has noted that the crime could have stemmed both from motivations of common criminality and from political factors. In any case, the conclusions reached by Scotland Yard as a result of its investigations strongly indicate that the killing of Ernesto Vélis was premeditated, and was not the result of a foiled attempt at car theft.

21. In the ninth report, the Secretary-General was informed of the attempted execution of José Gabriel Quintanilla, who died of his wounds on 23 February.

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* The document may be consulted in room S-3560.

In spite of the fact that the Commission for the Investigation of Criminal Acts carried out the requisite investigation, which enabled the identification both of those materially responsible for the crime and of an eyewitness, and despite the fact that the suspects were already in custody for other crimes, the criminal court of the first instance at Chinameca has not pursued the investigation of this case, which by its characteristics would appear to have had a political motivation.

22. The following cases of reported extra-legal or arbitrary executions were verified on a priority basis during the period covered by this report.

23. José Mario López Alvarenga, a former commander of the Partido Revolucionario de los Trabajadores de Centroamérica (PRTC)-FMLN, member of that party's Political Committee candidate for the Legislative Assembly and the Central American Parliament, died on 9 December while coming to the defence of an elderly woman who was being assaulted in a street in San Salvador. The investigations conducted thus far by the ONUSAL Human Rights Division tend to confirm the supposition that this was not a politically motivated crime, and was perpetrated by common criminals who had not planned to kill the victim.

24. Siméon de Jesús Cartagena Pineda, member of FMLN's Ejército Revolucionario del Pueblo (ERP) and a promoter of the Federación de Cooperativas de la Reforma Agraria Región Central (FECORACEN), was murdered at his home in the early morning of 10 January along with his 13-year-old stepdaughter in Colonia Las Moras de Colón, in the Department of La Libertad, by two armed intruders. His wife, María Mercedes Pérez, suffered serious bullet wounds. Active verification has established that the murders were committed in association with the theft of some possessions of little value. The Human Rights Division is nevertheless continuing to investigate the case. The victim's political affiliations, the family's poverty, and also the value of the objects removed and the means employed to carry out the crime leave doubts as to whether the motive was robbery.

25. Saúl Antonio Alas was abducted within 100 metres from his home on 30 November by men in civilian dress who put him into a white vehicle with polarized windows. The victim was executed at 6.30 p.m. that same day, at the entrance to the Batista farm in the canton of Santa Lucía Los Palones, in Panchimalco. Nearby residents stated that they saw three people get out of a white vehicle with tinted glass and fire at a man whose hands were bound and eyes blindfolded. During the investigation, and according to the declarations of the victim's sister, Inés del Carmen Alas, it was learned that the victim had been a PRTC-FMLN combatant between 1982 and 1985 in el Cerro de Guazapa, and had been held for seven weeks in Mariona prison for political reasons. The victim had recently joined the Treasury Police as a detective.

26. José Alfredo de Jesús Portillo, demobilized former combatant of FMLN was killed on 30 November in the hamlet of Las Piscinas, Hacienda Sicasa, near Mercedes Umaña. The killing was carried out by two hooded persons armed with M-16 rifles who fired on the victim without saying a word. At the time of the attack, José Alfredo de Jesús Portillo was working with another person in a sesame field.

27. The investigation led to a suspect answering to the name of Reinaldo Soriano, who had continual conflicts with the victim. He is a former member of the armed forces who served in the Army from 1982 until 1985 when he is said to have deserted. He has a history of disorderly conduct, for which reason he was rejected from the land transfer programme. This information was obtained through inquiries among the populace of neighbouring areas. Moreover, there had been a history of conflict between the two since Reinaldo Soriano had assaulted the victim on several occasions, including entering his home to steal a small sum of money and a sack of corn, as well as making several threats against him. The existing evidence thus supports a hypothesis of common crime.

28. José Santos Vásquez Henríquez was killed on 14 November, presumably by personnel from the Third Military Detachment, in the Department of La Unión. In their rapid and efficient investigation of this crime, the National Civil Police were able to obtain the testimony of eyewitnesses implicating soldiers who had been carrying out patrol duties in the Cantón Loma Larga district. The National Civil Police then handed the investigation over to the judicial branch, which thereupon opened homicide proceedings. The commander of the Third Military Detachment placed the soldiers involved at the disposal of the judicial branch. This case is significant because of the efficiency of the investigation carried out by the National Civil Police and the conduct of the commander of the Third Military Detachment, who, acting in strict accordance with legal requirements and in a spirit of institutional cooperation, placed the personnel presumed to have been involved in the killing at the judiciary's disposal.

29. Mauricio Ernesto Alfaro, Carlos Ramírez López, Enrique Guevara, Cristian Salguero, Carlos Antonio Carrillo and Luis Aguilar were killed between 8 and 8.30 p.m. on 11 December, in a place called Cuesta Carranza in Colonia Los Olivos, Primavera de Santa Ana canton. They were all residents of that canton. The first four were finished off with shots from M-16 rifles, and were left lying beside one another. The bodies of the other two victims were found two blocks away; their throats had been slit and they had stab wounds in the back. Their hands showed signs of having been bound and one of them still had a knife in his neck. On the day these acts took place, the National Police of Santa Ana, with the support of a rapid-deployment unit of the Army based in San Salvador, completed an anti-crime operation called "Operation Estrella" in the region, which resulted in the detention of 175 persons including army sergeant Adán de Jesús Alvarado Acevedo, army driver Rafael Antonio Cardona Guerrero (both with the Cavalry Regiment based in La Libertad), and Miguel Angel Alvarado, brother of the above-mentioned sergeant. According to the National Police account, these persons were detained for illegally carrying military weapons.

30. A few hours after these acts took place, ONUSAL received the testimony of a person (whose identity is not being revealed) who claimed to have been detained and taken with the others to the place called Cuesta Carranza to be executed. It was only through a personal circumstance that his abductors were dissuaded from killing him, but the six victims were not so lucky. That same day this witness, accompanied by ONUSAL observers, went to the National Police, to file a complaint and he there identified his abductors and those who had carried out the execution among those detained in "Operation Estrella".

31. At the police precinct, ONUSAL observers interviewed the persons implicated who identified themselves as active-duty members of the cavalry regiment and claimed, in regard to these acts, that they had been carrying out a mission entrusted to them by Major Varona Pineda, and that their weapons had been provided by Sergeant Lizandro Palacios Escobar. Likewise, they indicated that they had been in the canton to "spy on" a local dwelling. In fact, ONUSAL was later able to establish that at 9.15 p.m. that same day, or approximately 45 minutes after the executions, the house of FMLN political leader Israel Morán had been searched, and that the identity documents of the victims and of four survivors had been found there.

32. The judicial investigation, which was started by the Third Justice of the Peace in Santa Ana, and continued by the Third Criminal Court of that city, established that the M-16 rifles which had been used to kill four of the victims were the same as those subsequently confiscated from the accused by the National Police.

33. Moreover, it is stated in the judicial record that the accused Alvarado Acevedo and Cardona Guerrero had been on active duty in the cavalry regiment of this unit until 15 December 1993, when they were discharged because they had been taken into the custody of the judicial authorities. It is also stated that Sergeant Elizandro Palacios Escobar assigned the two M-16 rifles on 22 November 1992. The evidence attached to the record further states that Sergeant Alvaredo is detailed for intelligence-gathering duties in the San Salvador volcano region, as evidenced by the orders of the staff of the Second Mechanized Battalion of the Cavalry Regiment.

34. In the official statements the accused contradict what they told ONUSAL observers on the day of the incidents. In those statements, the accused claim to have been in Primavera canton to attend a family wedding, and deny that they were there for purposes of spying as stated above. Moreover, they signed a deposition stating that the weapons had been found in the home of Sergeant Alvarado when the National Police searched it after his arrest (it should be noted that the Sergeant's home, located on San Antonio farm in Las Aradas canton, is more than 30 minutes by car from Primavera canton). Finally, they denied any participation in the execution of the six victims.

35. The Third Criminal Court asked the military command to state what specific duties the accused had been assigned. Since a reply was not immediately forthcoming, the ONUSAL Military Division asked the general staff of the armed forces for information, and was informed that because of the existence of a criminal gang operating in Primavera canton, Sergeant Alvarado had been authorized to "get busy in this zone", and also to arrest the persons who had stolen 32,000 colones from his father. However, it appears that the command had not authorized him to use weapons, notwithstanding what is stated in the last point in the judicial record. No mention is made by the general staff of any intelligence-gathering being carried out on the San Salvador volcano.

36. In the days following these events, ONUSAL obtained information that three other persons had been seized along with the six victims, and for different

reasons they had been able to save themselves from execution. It has been difficult to locate them (all have changed residence), and to gather evidence.

37. A communication from the Alianza Republicana Nacionalista (ARENA) party reported the murder of the party's treasurer, Miss Velmy Guzmán, on 7 February in Ciudad Barrios, department of San Miguel. Verification carried out by the Human Rights Division in coordination with the local National Civil Police, indicates that the incident occurred while the victim was driving with her father, Mr. Carlos Guzmán on the highway from Ciudad Barrios to Chapeltique; they were intercepted by six heavily armed men who fired on the victim when they saw that she and her father were trying to get away.

38. On the night of 29 December 1993, Rubén Eduardo Vanegas, Santos Vanegas and Lorenzo Cabrera were arbitrarily executed in their home in Ochupse canton, on the El Cedro farm in the department of Santa Ana. Four armed persons came to the house of Mr. Rubén Eduardo Vanegas, former ERP member and current FMLN leader in the canton, shouting his name and threatening to kill the entire family with a bomb unless he came out. Mrs. Santos Vanegas, Rubén Eduardo's grandmother, tried to speak to the group but was immediately shot and killed. A few minutes later, his grandfather, Mr. Lorenzo Cabrera was executed in a similar manner. In order to avoid a possible attack on his wife and three minor children, who were inside the house Vanegas came outside and was immediately gunned down and his throat was slit. As he lay bleeding, one of the attackers carved a letter "M" in his chest with a knife (in the past, the letter "M" was the signature used by a death squad known as "la mano blanca").

39. One month before his death Rubén Eduardo Vanegas had felt threatened by elements of the National Police and had filed a complaint accordingly. The way the killing was carried out does not suggest a common criminal objective, and there are serious indications that the Vanegas murder was carried out with a political end in mind.

40. José Luis Chicas Martínez and José Alfredo Bonilla Cruces, members of the National Police, were murdered in San Salvador on the morning of 1 December 1993, after having been abducted by two unknown individuals who were travelling in a stolen Toyota. The victims were abducted from a machine shop on the same day as their murder by several armed persons, who forced them to get into the vehicle. According to eyewitnesses, the perpetrators of the double murder had committed assaults some days before the murders, at which time they had identified themselves as police officers. The information and eyewitness testimony gathered by ONUSAL show that the possibility of political motivation in these acts is practically nonexistent. The evidence would appear to indicate that the murders may have been part of a settling of scores connected with criminal acts possibly involving members of the armed forces.

41. René Alonso Tenorio, member of the ARENA youth wing and son of José Carlos Tenorio, the current mayor of San Sebastian Salitrillo, was murdered on 20 February in Colonia San José Unida, located on the old highway from Santa Ana to San Salvador. ONUSAL began an official verification of the case, not ruling out the possibility of political motivation for the killing, which was publicly denounced by parliamentary representatives of the ARENA party as being the

responsibility of members of the FMLN. Nevertheless, it has been established that the perpetrators of the killing were four of the victim's relatives, who had acted purely on the basis of a family quarrel. The Second Criminal Court of Santa Ana issued a warrant for the arrest of the four suspects.

42. José Francisco Rodríguez Meléndez was killed at 4.45 p.m. on 2 November 1993 by unknown individuals who machine-gunned the vehicle in which he was riding with a female friend. His car was cut off by a red pick-up from which two armed individuals emerged, one of whom headed towards the victim's vehicle. Victim and attackers immediately began to exchange shots. In an attempt to escape, the victim got out of his vehicle but was chased down and finished off with a coup de grace sixty metres away. The victim worked for the recruitment and reserves office of the armed forces. Despite the fact that the motives and identity of those responsible have not been clarified, ONUSAL interviews with the victim's female friend and the judicial authorities indicate that Rodríguez Meléndez may have been involved in activities of a criminal nature.

43. Saturnino Díaz Claro, a soldier with the Sixth Brigade based in Usulután, was murdered in the city of Usulután, Colonia el Paraíso, on 16 November 1993 by five shots from a .38 calibre weapon fired at point-blank range. Legal investigation procedures in connection with this killing have not progressed beyond the initial stages, and no major information has been uncovered. In an interview with ONUSAL observers two and a half months after the murder, Díaz Claro's long-time companion claimed to have no information regarding his death; ONUSAL verification has produced no clarifying results either. Nevertheless, this murder appears to have no political implications.

44. Carlos Alberto Marín, ARENA militant, died of bullet wounds he suffered in an attack in front of his home in the city of Cojutepeque on 12 February. ONUSAL learned of the incident through the communications media, which included his name in a list of ARENA members claimed to have been victims of political violence.

45. ONUSAL verification revealed that the victim, who was primarily preoccupied with his business, had quarrelled with two other local merchants. One week before his death, he filed a complaint against one of them, José Fuentes, alleging that he had publicly threatened him with a pistol. In their statements, both to ONUSAL and at the trial, members of Marín's family held Fuentes and the other merchant responsible for Marín's death.

(b) Attempted arbitrary or extra-legal executions

46. Marta Valladares (Nidia Díaz) former Commander of PRTC-FMLN, was the victim of an attempted arbitrary execution on 24 February 1994. At 7 a.m. on that day she left home in a Toyota van with tinted glass belonging to the chief of the FMLN campaign, Rogelio Martínez, to go to Bautista Hospital where she was to have a minor surgical operation. The driver of the vehicle, Santiago Cruz Elías Pineda, left her at the hospital in the company of a bodyguard; he went to cash a cheque and later went back alone to the former Commander's house. On the way, he noticed that another vehicle, a white Toyota

with tinted glass, was following him, but believed he had managed to lose it. At about 9.30 a.m., as he arrived at his destination, the vehicle was fired upon by three men travelling in the vehicle that had been following him some minutes before; they opened the side doors and opened fire, aiming mainly at the back of the vehicle where Nidia Díaz was assumed to be. Elías Pineda, who drove off the attack, was slightly wounded. Information obtained thus far, and the circumstances of the attack, support the hypothesis that it was politically motivated and that the attackers believed that Nidia Díaz was inside the car. It is not possible, however, to rule out other possibilities which are being investigated by the Human Rights Division.

47. Rubén Osvaldo Escalante, the ARENA candidate for the town council of San Marcos, was attacked on 5 February by five masked individuals who stabbed him with a knife, leaving him seriously injured. On 15 February an ARENA deputy denounced the presumed criminal attack against Rubén Escalante in the media. Mr. Escalante informed ONUSAL that he had been attacked after surprising two unknown men who had broken into his house and had been going from room to room for several minutes before being intercepted by him. One of the intruders, on seeing Escalante, attacked him with a knife without uttering a word. The assailants fled empty-handed. The victim maintains that he cannot say for certain that the incident was politically motivated but that there were very strange circumstances: for example, nothing was stolen, the attackers were carrying knives rather than firearms, and also the incident occurred at the same time as other instances of aggression against members of ARENA. Moreover, during the last electoral campaign, another similar criminal act had been perpetrated against him and his family. On the basis of information obtained to date, the Human Rights Division considers that there is little real evidence to suggest that this was an ordinary crime, in other words an attack by criminals who were caught in the act while attempting to rob the victim's house. Accordingly, the possibility that the offence was politically or personally motivated cannot be ruled out.

48. Juan Antonio Villalobos, candidate for alternate deputy of ARENA for San Salvador, was shot in the leg when four unknown individuals came to his home in San Salvador on 14 February and tried to steal his vehicle. According to the victim, one of the attackers pointed a gun at him and asked for the key of the vehicle; then they asked him if his house was open and tried unsuccessfully to force the door of the house. The victim thought they were going to abduct him because of his political position and, when one of the criminals snatched a gold chain from around his neck, he therefore ran to the corner shouting for help. One of the individuals fired at him, wounding him in the leg. Because of the disturbance caused by the shouting and gunshots, the criminals did not pursue him, and fled taking the gold chain but leaving the vehicle. That same day, an ARENA deputy denounced the attack as an act of politically motivated violence, claiming that the attackers' principal motive had been to cause serious injury to the victim. The latter, however, stated that he did not believe this to be a political incident but an ordinary crime, and his account of the events differed on various points of substance, with the one that was denounced publicly.

(c) Death threats

49. The statistical report shows that 77 death threats were recorded during the period covered by the report. This is the highest figure of any period in 1993 and 1994 and is thus an extremely disturbing indicator. It appears to be attributable to two factors. On the one hand, the increase in criminality, especially organized acts including abductions and threats, and, on the other hand, the electoral context, seems to have prompted use of these practices, particularly against leaders and militants of the opposition parties. Despite their seriousness, the threats have so far not been put into effect, which would seem to indicate that their main purpose is to intimidate.

50. The Human Rights Department of the Ministry of Defence filed a complaint with ONUSAL regarding death threats against Manuel Antonio Recinos, a member of the Special Military Security Brigade. Attached was a copy of the written threat received by the complainant entitled "Communication from ERP", and supposedly signed by FMLN on 16 October 1993, which was left at his home in the municipality of Mercedes Umaña, Department of Usulután.

51. The note, which is typewritten, is fairly general and rhetorical in content and makes clear reference to the intelligence work which the victim is supposed to have carried out during the conflict "which caused the death of so many innocent people". The next sentence urges the recipient to support "FMLN Convergencia Democrática" in the forthcoming elections. It lists the journeys on which the victim might be at risk and gives him 55 days "to decide whether to live or die". In addition, the note states "we started with your brother and you may be next", a clear reference to the victim's brother, Mario Rutilio Recinos, who was assassinated in August 1993 in circumstances that have not yet been fully clarified.

52. The Human Rights Division is continuing to investigate the case which was opened after the assassination of Mario Rutilio. It appears from the verification that the motive was the theft of 6,000 colones that had been lent to him that very day. The principal murder suspects are two other soldiers who were seen with him on the day of his death. It is suggested that the killers may now be acting against the brother for reasons connected with the investigation into the death of Mario Rutilio Recinos. When questioned directly about possible political contacts which might have left his dead brother or himself open to some form of persecution by FMLN, he replies in the negative. He considers that his and his dead brother's functions in the armed forces are not such as to attract political vengeance.

2. Right to integrity of person

(a) Torture

53. In the period covered by this report five complaints of torture were recorded; after being actively verified by the Division, none of them was substantiated. This is undoubtedly encouraging, particularly if it is borne in mind that during the previous period, from August to October, three cases of torture were substantiated upon verification.

(b) Ill-treatment

54. During the four months covered by this report, 40 cases of ill-treatment were recorded; 27 of them were filed during the months of November and December; thus, the number of complaints continues to decline, although slowly. It was pointed out in the ninth report that if the slight downward trend in cases of ill-treatment were confirmed in the next few months "it could eventually become a steady trend towards a decline in this type of violation". Ordinary arrests in the period covered by the study point in that direction. One important factor in the relatively lower number of complaints of ill-treatment might be the deployment of the National Civil Police.

(c) Excessive use of force

55. Violations of physical integrity due to excessive use of force imply that despite of the fact that the use of force is legitimate in principle, the force used by the official was disproportionate. In this context it is essential that the personnel of the National Civil Police, and of the National Police until such time as it is dissolved, display a high standard of professionalism with regard to the appropriate use of force in police work, particularly in the use of their official weapons.

56. During the period covered by this report, 19 complaints of the use of excessive force were submitted to the Division, continuing the trend recorded in earlier periods.

57. Almost all the complaints reported were substantiated on verification and show regularly recurring patterns of conduct. . One representative instance of this police behaviour is the following: on 8 December 1993, when members of the National Civil Police were carrying out an operation in Ilopango, Department of San Salvador, in connection with a suspected abduction in San Vicente, a lorry driver, José Alex Orantes, failed to stop when signalled to do so by the policemen carrying out the operation because he thought he was being attacked. He was pursued and, just as he was stopping, was wounded by a shot fired by one of the policemen in spite of the fact that he was obviously unarmed.

3. Right to security of person: enforced or involuntary disappearances

58. During the period under review three cases of enforced disappearance were reported. However, inquiries made by the Human Right Division established that in none of the three cases had any one disappeared. The whereabouts of the presumed victims were ascertained, in the course of the inquiries, as were the circumstances that gave rise to the complaints, and none of the cases can be described as an enforced disappearance. There were therefore no disappearances during the period, thus confirming the positive trend under this heading. The fact that there have been no enforced disappearances in El Salvador for a total period of 20 months is undoubtedly a positive factor attributable to the peace agreements.

4. Right to liberty: arbitrary detentions

59. The Human Rights Division verifies human rights in El Salvador on the basis of international human rights law and the universally accepted principles for safeguarding and protecting those rights, within the framework of the mandate conferred on the Government and FMLN by the San José Agreement.

60. In this context, for the verification of the right to personal liberty and, more specifically, for the verification of complaints received concerning arbitrary or illegal detentions, the Human Rights Division defines its intervention in terms of the relevant international instruments, in particular: the International Covenant on Civil and Political Rights, which provides in article 9, paragraph 1: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law"; the American Declaration of the Rights and Duties of Man which provides in the first paragraph of article XXV that "No person may be deprived of his liberty except in the cases and according to the procedures established by preexisting law"; and the American Convention on Human Rights which provides in article 7, paragraph 2 that "No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto".

61. In relation to administrative detention, the Human Rights Division starts from the position that, even if such detention is accepted under international human rights law, it must be applied within strict legal limits so as to prevent its improper use to the detriment of human rights, since it is a practice offering fewer safeguards than judicial detention. Similarly, the Human Rights Division endorses the terms in which administrative detention was defined by the Subcommission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights which stated that detention is administrative detention "if, de jure and/or de facto, it has been ordered by the executive alone and the power of decision rests solely with the administrative authority, even if a remedy a posteriori does exist in the courts". 1/

62. Administrative detention in El Salvador is regulated by the second paragraph of article 13 of the Constitution which provides that: "Administrative detention shall not exceed 72 hours, within which time the detainee must be handed over to the competent court, together with the results of whatever proceedings may have been taken." Referring in article 14 to administrative trial and penalties, it further provides that the judiciary is the only organ with the power to impose penalties. Nevertheless, by decision or ruling after a trial, the administrative authorities may punish infractions of laws, regulations or ordinances by up to 15 days' of detention or by a fine, for which an equivalent period of detention may be substituted.

63. As for secondary legislation pursuant to the third paragraph of article 243 of the Code of Criminal Procedure the auxiliary organs may arrest a person, even without a judicial warrant, on the basis of a written, reasoned warrant, subject to immediate judicial review. However, there is no act that states specifically which administrative authorities are empowered to order or to execute detention warrants.

64. On the other hand, the 1886 Police Act provides that mayors shall be competent to hear and punish petty misdemeanours (faltas de policia). However, the Municipal Code, in spelling out the specific functions of mayors, makes no mention of the function of hearing and punishing petty misdemeanours, nor does it establish a list of offences or of administrative punishments to be imposed, which would indicate the limits of the mayors' authority.

65. El Salvador does not have a special act regulating administrative detention and restrictively enumerating which administrative authorities are empowered to order or to execute arrest warrants. Thus, in accordance with the principle of the rule of law it must be understood that the only authorities having such powers are those to whom such powers are expressly granted in the respective organizational law, which is true only of the National Civil Police. Consequently, only the latter, pursuant to the provisions of article 13 of the Constitution may order an administrative detention, which order must be reasoned and in writing.

66. Since the Municipal Code does not give mayors authority to hear and punish petty misdemeanours, it follows that any decision by a mayor in respect of offences or the imposition of punishments, even where provided for in municipal ordinances, infringes the principle of legality whereby there is no offence, nor any punishment, except as provided by law.

67. During the period covered by this report, the trend, noted in earlier reports, towards a large number of arbitrary detentions for petty misdemeanours has continued on three fronts: firstly, administrative detentions imposed in violation of the principle of legality, inasmuch as persons continue to be detained for conduct not specified or not characterized in the law; secondly, administrative detentions imposed in violation of minimal procedural safeguards because they are not preceded by legal proceedings prior to imposition of the punishment; and, lastly, detentions executed by authorities not empowered to do so.

68. As has repeatedly been pointed out, an effective and comprehensive solution to the problem of arbitrary detentions for petty misdemeanours can only be achieved through repeal of the 1886 Police Act and introduction of the necessary legal changes so as to bring the Salvadorian legal order into line with the Constitution and with the norms of international human rights law by granting justices of the peace full and exclusive jurisdiction over offences, in the framework of the pending comprehensive reform of the Criminal Code and the Code of Criminal Procedure.

69. In a broader perspective, the scale of the problem of violations of the right to personal freedom as a consequence of arbitrary administrative detentions in El Salvador can be assessed by placing it in the typological framework drawn up by the expert Louis Joinet following a comparative study of the causes of arbitrary administrative detentions in various countries. 1/

70. It classifies the practice of administrative detention under five generic descriptors: (a) detention arising from threats to public order and to State security which are generally prompted by the situation of civilian populations in cases of armed conflict, by states of emergency and by internal disorder and tension; (b) administrative detentions as measures related to the status of foreigners, for example confinement of people at frontier posts, the placing of foreigners under house arrest, the detention of people subject to extradition proceedings, foreigners seeking asylum, or political refugees; (c) administrative detention for purposes of "re-education", which generally has political ends, is mandatory, is based on self-criticism and is further characterized by the fact that freedom depends on the "progress" made by the detainee; (d) detention as a disciplinary measure, essentially a measure adopted by a higher authority as punishment for indiscipline in the army or in prison; and (e) administrative detention as a measure against social maladjustment, in other words a measure that is applied to particular persons who, because they are poor, are considered socially maladjusted, or in compliance with what are known as laws "for the protection of society", as in the case of "vagrants" or "suspicious persons", or prostitution.

71. In terms of the position of El Salvador with respect to international norms on arbitrary detentions, the active verification carried out by the Human Rights Division establishes that in El Salvador administrative detentions fall into the last category described. Although it is encouraging to find that there are no arbitrary detentions resulting from the other situations mentioned, particularly those having political connotations, the arbitrary nature of the overwhelming majority of cases of administrative detention in El Salvador may be described as a structural source of human rights violations in that country. This disturbing fact stems from the inadequacy and lack of clarity of the legal regime on the matter, from the implementation of the 1886 Police Act, from the arrests made by the police without legal justification or without satisfying legal requirements, and from the systematic failure to respect the time-limit for administrative detention established by the Constitution.

5. Freedom of association and effective enjoyment of trade union rights

72. In the ninth report it was stated in relation to freedom of association and the enjoyment of trade union rights that: "Despite the fact that the Forum for Economic and Social Consultation has encountered difficulties and obstacles in promoting concerted social action, the Human Rights Division could see that such difficulties are inherent in an area where there are divergent interests. It would therefore be unrealistic at this stage to expect a tripartite process of concerted action by the State, the society and the business world that would be free of problems, tension and even crises. Consequently, the value of any concerted economic and social action must be judged not in terms of the problems encountered but in terms of the capacity to identify them, work through them and resolve them through understandings and consensus arrangements" (see A/49/59-S/1994/47, para. 56).

73. This positive view is based on the favourable trend observed in El Salvador in the enjoyment of freedom of association and trade union rights. It is clear that the serious problems that used to affect the exercise of trade union rights and that seriously constrained the human rights of trade union members in the past are being progressively overcome and that the situation is characterized by a process of negotiation that is intended to establish legal norms that are representative of the international standards recommended by the International Labour Organization.

74. From 27 September to 1 October a mission of direct contact from the International Labour Organization (ILO) visited El Salvador in the framework of the procedures of the Committee on Freedom of Association. This visit was in compliance with one of the substantive recommendations made by the Human Rights Division.

6. Right to due process of law

75. Complaints concerning violations of due process of law have increased substantially with regard to the legal obligation of the State to prosecute offences. During the period, 68 complaints were received. This situation raises once again the question of the independence and capacity of the judiciary to ensure the effective administration of justice. The Human Rights Division must once again draw attention to the fact that the State has a duty to provide guarantees, and that these guarantees are not yet freely available. The analysis of overall trends in violations of the right to due process of law which, together with violations of the right to life, are the most numerous, indicates that the problem is a complex one and arises from a series of causes, including the delay in adopting new laws or amending existing ones, or aspects which have a bearing on the training and specialization of judges and magistrates or, again, questions relating to functional and administrative aspects of the administration of justice. However, these same trends point to the fact that the principal cause of this situation, which has systematic characteristics, is the lack of independence of the judiciary, something which can only be overcome through urgent and essential constitutional reforms so as

to change the Supreme Court's present vertical organization which constrains the independence of judges and magistrates and relativizes the freedom of judgement which they are supposed to have and to exercise in the fair administration of justice.

7. Right to freedom of expression

76. As in earlier periods, the Human Rights Division has observed substantive respect by the State of the right to freedom of expression. This is of particular importance in the context of the electoral process, in which it is essential that there be necessary and adequate safeguards to permit freedom of expression of all political forces through the various information media.

8. Political rights and the right to identity documents

77. In the period to which this report relates, the Electoral Division of ONUSAL continued to channel its efforts to expand the electoral roll, providing enormous help to the Supreme Electoral Tribunal in the work of registering voters and issuing voter registration documents. During this period, the ONUSAL teams made an average of six observation visits to each of the country's 262 towns, or more than 1,700 visits. ONUSAL also provided support for the Tribunal plan during this period by dispatching some 2,500 mobile team visits, involving more than 5,000 trips by Mission staff. In the course of providing this support, some 297,000 kilometres of travel and roughly 180 hours of helicopter flying time were logged.

78. Quantitatively speaking, the registration exercise can be counted a success. With regard to the registration phase, when the deadline for submitting registration requests was reached on 19 November 1993, the outcome of the registration campaign launched by the Tribunal in July of that year was generally commended in political circles. The official figure of 787,834 registration requests reflects a high degree of citizen mobilization.

79. As for the number of actual registrations, when the electoral rolls were closed on 19 January 1994, the total stood at 2,653,871, of which 2,171,805 corresponded to voter registration cards issued in previous years and 482,066 for temporary cards that could be converted into permanent cards once they became available in the distribution centres and were claimed by the individuals concerned. By 19 January voter registration cards had been issued to approximately 80 per cent of the estimated population of voting age. Once the temporary cards are converted into permanent cards, as many as 2.3 million Salvadorians may appear on the final electoral rolls and possess a registration card that will allow them to vote, according to projections made in September 1993 by the ONUSAL Electoral Division. This is equivalent to 85 per cent of the estimated voting-age population.

80. Setting aside the identification of specific problems and inadequacies which do not in themselves affect the overall validity of the process, this

trend demonstrates the essentially solid direction taken by the process of documentation and of preparation for the elections.

C. Active verification of other commitments established in the peace agreements and having human rights and institutional support components

1. The administration of justice

81. An efficient system of administration of justice - in which the State is cognizant of and respects the limits established by the law, which constitutes the essence of a state government by the rule of law - providing due legal certainty to the citizen in the free exercise of his will and protecting his fundamental rights, is the backbone of democracy.

82. This state of democracy is attained where there exists a coherent body of law guaranteeing human rights along with institutions ensuring effective compliance with the law, so that within the context of the separation of State powers power is counterbalanced by power; so that there exist the necessary independence and impartiality in the definition and application of justice; so that justice may remain aloof from ideologies or political concerns.

83. The proper administration of justice as an essential element of peace was the premise on which, in the General Agenda established by the Government and FMLN in the Caracas agreements, was based the negotiation of the fundamental reforms that must be pursued within the system of the administration of justice, reforms embracing both substantive and procedural law together with the concomitant establishment or adaptation of institutions to ensure the effectiveness of the judicial system.

84. In essence the reforms proposed in the peace agreements by the parties to ensure appropriate compliance by the State with its duty to provide guarantees regarding the administration of justice, and thus eliminate the principal source of impunity in the country, are intended: (a) to ensure the autonomy, independence and impartiality of each and every institution forming the system of administration of justice in the context of the separation of powers of the State; (b) to create new institutions and to streamline and make more effective the existing institutions within the system of administration of justice; and (c) to provide El Salvador with a modern legal system embodying guarantees, under which the authority and sphere of competence of the judiciary are established in strict observance of human rights.

85. These changes have begun to take shape in the guise of various constitutional reforms in the context of the commitments on the system of administration of justice and the protection of human rights included in the Mexico Agreements.

86. The first of these constitutional reforms involves the reorganization of the Supreme Court of Justice and a new means of electing the justices of the

Court, whereby they are appointed by a two-thirds majority of the Legislative Assembly, to ensure their impartiality.

87. Similarly, to endow the system of administration of justice as a whole with the impartiality and independence which are essential to it, the Mexico Agreements provided for the adoption of a constitutional reform whereby the Attorney-General of the Republic and the Chief State Counsel should be appointed by a two-thirds majority of the Legislative Assembly. The same procedure was intended for the appointment of the National Counsel for the Defence of Human Rights, an institution established at the constitutional level under the Agreements as a quasi-jurisdictional mechanism for the protection of human rights, and which, within the democratic framework of the separation of powers and as part of the Public Prosecutor's Office, is intended to strengthen the monitoring machinery available to the State to promote respect for human rights.

88. Other substantive changes to ensure the independence and impartiality of the system of administration of justice were to be achieved, under the Mexico Agreements, through the adoption of reforms to Salvadorian secondary legislation: a redefined structure for the National Council of the Judiciary to safeguard its independence vis-à-vis State organs and political parties and to guarantee representation on the Council of other sectors of society not directly linked to the system of administration of justice; and a redefined career judicial service, so that admission to the service is based on mechanisms guaranteeing objective selection, equal opportunities for all candidates and the selection of the best qualified candidates. In accordance with these Agreements the Legislative Assembly, in November 1992, adopted the new National Council of the Judiciary Act and amended the Career Judicial Service Act.

(a) National Council of the Judiciary Act

89. The Human Rights Division noted, in the sixth report to the Secretary-General, that this Act did not satisfactorily ensure the independence of the Council vis-à-vis State organs and political parties, since it provides for the election of members and alternates by a qualified two-thirds majority of the Legislative Assembly, which means that two or more political forces representing the required majority might share the Council's posts between them, thereby accentuating the partisan nature of the system of justice. On that occasion the Human Rights Division also recommended that the independence of the Council budget should be assured, noting that the Council should draw up a preliminary budget and submit it to the Supreme Court of Justice in July of each year, and that any adjustments in budgetary planning which the Supreme Court of Justice deemed necessary should be made in consultation with the Council (see A/47/912-S/25521, annex, paras. 216-227).

90. In connection with the composition of the Council, the Human Rights Division noted that the Act adopted by the Legislative Assembly limits the composition of the Council to individuals connected with the judicial system, without including other social sectors that could contribute to its independence and an improvement in the system of administration of justice, as provided for under the peace agreements. With respect to the appointment of magistrates and judges, the Human Rights Division recommended that the National Council of the

Judiciary itself should be responsible not only for selection but also for appointment, and, further, that members of the Council should be appointed directly by the institutional or social sector they represented, rather than through the Legislative Assembly. In this connection it would be advisable to revise the amended texts of articles 186 and 187 of the Constitution.

91. The Commission on the Truth complemented this by recommending the elimination of those provisions of the National Council of the Judiciary Act which left the dismissal of some members of the Council to the discretion of the Supreme Court of Justice, so that they could then be dismissed only for precise legal causes, to be weighed by the Legislative Assembly.

(b) Career Judicial Service Act

92. In the framework of the reforms of the system of administration of justice proposed in the peace agreements, the Legislative Assembly has amended the Career Judicial Service Act to bring it into line with the principles underlying the constitutional reform and to define the administrative structure of the career judicial service.

93. In this connection the Human Rights Division, in the sixth report of the Director to the Secretary-General, noted that the amendments made to the Career Judicial Service Act "merely guarantee the Court itself increased powers with respect to, inter alia, the administration of the career judicial service ... and the imposition of disciplinary penalties on judicial officials" (see A/47/912-S/25521, annex, para. 230). Further, the Division noted that it was necessary for the Act to lay down clear and uniform criteria governing selection procedures, the profile required of applicants to the judicial service, the type of competitive examination and the nature of the training to be given by the Judicial Training School. The School was established under the Mexico Agreements with the objective, under the authority of the National Council of the Judiciary, of promoting continuous improvement in the professional standard of judges and other judicial officials.

94. In a similar vein the Commission on the Truth stated that the Career Judicial Service Act should be amended to establish that only those judges who, according to a rigorous evaluation made by the National Council of the Judiciary, had demonstrated judicial aptitude, efficiency and concern for human rights, and who offered every guarantee of independence, judicial discretion, honesty and impartiality in their actions, might remain in the career judicial service.

(c) Reform of the judiciary

95. In order to guarantee the independence of the system of administration of justice, the Commission on the Truth recommended the adoption of reforms to overcome the tremendous concentration of functions in the Supreme Court of Justice and its President, on the ground that this undermined the independence of lower court judges and lawyers. The thrust of the recommendation was the transfer of functions from one authority to another, and not mere administrative decentralization, which, technically speaking, is a delegation of authority.

The Court, without losing its status as the country's highest court, should not, in the interest of the independence of the judiciary, be the administrative head of the judiciary.

96. In a similar vein the Commission on the Truth recommended that judges should not be appointed and removed by the Supreme Court of Justice, but independently by the National Council of the Judiciary; that each judge should be responsible for administering the resources of the court under his jurisdiction and should be accountable for them to the National Council of the Judiciary; and that the functions of granting authorization to practice as a lawyer or notary and the suspension or penalizing of members of those professions should be attributed to a special independent body and not to the Supreme Court of Justice.

(d) Constitutional justice

97. In its sixth report to the Secretary-General, the Human Rights Division drew attention to the shortcomings in the legal regulation of habeas corpus, essentially owing to the fact that the remedy has to be presented to courts of second instance, and that those courts delegate the execution of habeas corpus to executing officers, who in many cases are not lawyers. In this connection the Human Rights Division recommended the introduction of legislative and institutional reforms to make habeas corpus accessible, speedy and effective (see A/47/912-S/25521, annex, paras. 240-244). The Commission on the Truth made a similar recommendation.

98. The Commission on the Truth also recommended the amendment of the Constitution to include explicit provisions on human rights, including those contained in international instruments to which El Salvador is a party.

99. Other recommendations of the Human Rights Division and of the Commission on the Truth concern the amendment of the rules and guarantees relating to: due legal process; abolition of extrajudicial confession; strict compliance with time-limits for police detention; reinforcement of the right of defence starting from the very first actions in a proceeding; the strict regulation of administrative detention and the inclusion, in a further reform of the penal legislation, of crimes committed with the direct or indirect support of the State or its agents; the expansion of the system of information on detainees; the adoption of legislative reform to grant a simple, swift and accessible remedy to anyone who has been a victim of human rights violation enabling them to obtain material compensation for the harm suffered; and expansion of the application of the machinery for the protection of human rights available under international instruments.

100. These reforms as a whole must be seen in the overall context of the agreements. The amendments they involve affect the political structure of the State as a whole. In this sense the reforms of the armed forces and the establishment of a National Civil Police are linked to the reforms of the administration of justice and the judiciary. Compliance with each of these agreements is necessary in terms of compliance with the others. For example, as an auxiliary organ in the administration of justice, the National Civil Police,

together with the Office of the Attorney-General, has the most responsibility in the proper investigation of crime.

101. The Human Rights Division, in the discharge of its mandate, has closely followed the status of each of these reforms and has made recommendations to promote their speedy implementation. Section III of this report includes some considerations on the state of implementation of these recommendations.

2. The penitentiary system in El Salvador

102. On 18 November 1993 inmates at the San Francisco Gotera detention centre, used to house more dangerous prisoners, instigated a violent riot that led to the selective murder of 27 of the 130 prisoners housed in the first of the detention centre compounds. This serious confrontation, in which neither the administration nor the guards intervened, was the end-product of a series of acts of aggression and confrontation that took place over several months among the inmates in the compound - those incidents which resulted in deaths being of particular significance - against the rest of the detention centre population, and to which the penitentiary authorities in El Salvador did not respond, notwithstanding the fact that the Human Rights Division had repeatedly alerted them to the conflicts among the inmates.

103. On 17 January 1994 there was an uprising by some 300 inmates of the Sensuntepeque detention centre in a protest against physical ill-treatment at the hands of the guards, the poor state of essential services at the detention centre, and overcrowding. The inmates also requested transfers to other detention centres.

104. On 24 February 1994 a number of convicts who had been moved from San Francisco Gotera as a result of the 18 November riots caused a new disturbance at the Santa Ana detention centre in which seven inmates had their throats cut and another four were seriously wounded. In this case, in common with those of the other riots referred to, officials of the Human Rights Division and of the Office of the National Counsel for the Defence of Human Rights intervened as mediators, thus averting the possibility of a higher number of victims.

105. Those serious incidents, as well as the tense situation prevailing in those and in other detention centres in the country, demonstrate that the situation in the prisons of El Salvador is critical, and calls for action by the State to solve the structural problems in the prison system.

106. Active verification carried out by the Human Rights Division in the prisons of El Salvador has confirmed the existence of several types of serious shortcomings that reflect a failure on the part of the State to fulfil its obligations under the Constitution, article 27, paragraph 3, of which stipulates that the State is responsible for organizing the penitentiaries, with the aim of reforming offenders, educating them and teaching them work habits, looking towards their rehabilitation and the prevention of crime.

107. The lack of minimum security and the scarcity of trained personnel are problems that exist in almost all the prisons. The situation is compounded by overcrowding; in most prisons the population is more than double what the facility was meant to have. By way of example, the prison at San Miguel, built for a population of 150 prisoners, is currently shared by 380; Usulután, built for 100 prisoners, has 203; Sonsonate, intended for 200 inmates, currently houses 394, and La Unión, which was intended for 100 inmates, has 162.

108. Furthermore, funds are insufficient to properly cover even the minimum expenses of food, medical care and hygiene for the inmates and this, added to the poor prison administration means that, in many cases, inmates live in inhuman and degrading conditions and are hardly likely to have the minimum conditions needed for the process of reform and education which is their constitutional right.

109. Prison authorities commonly resort to various practices which are not in conformity with the provisions of the International Covenant on Civil and Political Rights and the American Convention on Human Rights, or with the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment. This is the case with solitary confinement, which is used regularly for disciplinary purposes, without giving the prisoner the right to a defence, without prior medical examination or daily supervision of the prison director. In most cases, the cell used for solitary confinement is also inadequate.

110. Isolating the accused by what is called the "suspension of visiting privileges" or by incarcerating them in centres located far from home, are common practices that violate the aforementioned international instruments. Also disturbing is the fact that persons awaiting trial, who make up more than 80 per cent of the prison population, are not separated from those who have been convicted.

111. Another cause for concern is the lack of an effective system to provide the accused with public defenders and legal assistance. In many cases the accused does not know how the trial is progressing or even where it is being held. Urgent measures are needed in this area, especially since it has been established by the judiciary and the prison authorities that some individuals remain in prison after they have served their sentences. One such case is that of Agustín Ramirez Perez, who was tried and sentenced to five years in prison by the First Criminal Court of Santa Ana; his five years were up in November 1990. Nevertheless, Mr. Ramirez remained in Mariona jail until 12 November 1993; in other words, he was held illegally for three years, an inexcusable example of incompetence on the part of the judicial and prison authorities.

112. In a statement to the press stemming from the incidents occurring in San Francisco Gotera prison, the Minister of Justice said that "prisons do not meet the requirements of security, nor the United Nations Standard Minimum Rules for the Treatment of Prisoners, but the penitentiary system, like the country, is a developing one". Since the Government is aware of the situation it should take prompt action to provide the prison system with adequate human and financial resources.

113. It is, therefore, encouraging that the Ministry of Justice itself has submitted to the Legislative Assembly a bill on prisons that starts with the full recognition that a man who commits an offence, simply because he is human, should be treated as a human being, and not be denied the benefits and prerogatives to which he is entitled as such. In its substantive part, the bill refers expressly to the validity of the relevant international norms contained in the treaties ratified by the State, which are binding on the State and which take precedence over any of the provisions in the bill itself; it also provides for the ancillary application of the Standard Minimum Rules for the Treatment of Prisoners and of the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, in the absence of any legal norms or regulations on the subject.

114. The bill expressly lists the internationally recognized rights of prisoners, and covers community participation, through the establishment of foundations and civil associations for social welfare, educational activities, work, aid and any other activities that the conditions of the sentence and security requirements will allow. It also provides for the establishment of a special prison jurisdiction with responsibility for prison supervision, judges to supervise prisons and enforce sentences, and a department of probation and assistance to released prisoners. The bill also regulates the enforcement of sentences not involving deprivation of liberty, such as community service, weekend detention, house arrest and the imposition of fines. The bill inter alia contains detailed provisions governing penitentiaries, prison treatment, work, disciplinary measures and the obligations of inmates.

115. This legislative reform initiated by the Ministry of Justice must, however, undergo lengthy review and assessment, during which any needed adjustments and reforms can be made to improve its application to the realities and institutional context of El Salvador.

116. The Human Rights Division believes that a systematic updating of prison information must be carried out in the immediate future, in order to guarantee the existence of true and reliable data about the prison population in El Salvador, as well as the adoption of measures so as to monitor observance of the law in detention centres. Regular prison censuses could be taken, by having judges visit prisons in order to interview inmates, closely monitor the situation of the accused and let them know how the trial is progressing. The Human Rights Division could cooperate with the prison authorities in the design and execution of an action plan.

3. The Office of the National Counsel for the Defence of Human Rights

117. The activities of the Office of the National Counsel for the Defence of Human Rights have continued to focus on three major areas: verification of human rights violations, strengthening of its institutional capacity, and promotion and education in the field of human rights.

118. In January 1994 the Office issued its fourth report, in which it noted that progress in human rights is complex and contradictory, and that we must see it for what it is in order to initiate appropriate solutions in each situation. We must recognize that there is still a strong tendency in many places to disregard citizens' basic rights, and that this can lead to serious situations such as political violence. But we must also recognize that mechanisms, procedures, standards and institutions have already been established and are in operation to channel socio-political will to promote human rights, and that they are making their weight felt in the peaceful and cooperative settlement of disputes.

119. The report also lists some of the Office's most immediate tasks, such as the investigation of acts of political violence, improvement of judicial and administrative due process, development of its investigation and monitoring techniques, design and establishment of a register of detainees, matters relating to the security of the citizenry, the situation of vulnerable social groups and increased activities and programmes in the promotion of human rights, education and training.

120. The institutional strengthening of the Office is a substantive issue where the requirements for the protection of human rights in El Salvador in the short, medium and long term coincide. The Counsel's decision to regionalize the national deployment of the Office was therefore a prudent one. Its operations will be decentralized throughout the country by means of eight local offices in the western, west central, central, east central and eastern regions.

121. One course of action that should strengthen the Office over the coming months is its increasingly dynamic link with non-governmental organizations; as the Counsel for the Defence of Human Rights himself stated, at the inauguration of the departmental office in San Francisco Gotera, these have played and continue to play an essential role in the defence and protection of human rights, and the Office should make full use of their experience and credibility.

4. Human rights components of reform of the armed forces and security forces

122. The Human Rights Division of ONUSAL, in coordination with the armed forces, is continuing to implement a specific programme for the development of aspects of military training in a democratic system, especially training in respect for the law and human rights and issues relating to the new doctrine of national defence. This programme, which includes the introduction of military sociology as a tool for reflection on the institutional role of the armed forces in democratic societies, is being implemented satisfactorily with appropriate cooperation by the armed forces.

123. Since November 1993, ONUSAL has verified the dissolution of the former National Intelligence Department and the surrender of other armed forces units in compliance with the peace agreements. The Government informed ONUSAL that the files of the former National Intelligence Department would remain in the possession of the Joint Chiefs of Staff of the armed forces. The final destination of those files has not yet been decided, although a systematic

interpretation of the peace agreements indicates that they should be handed over to the new State Intelligence Agency. In accordance with the constitutional reforms, the State's intelligence activities are the responsibility of the new agency under the Office of the President of the Republic, with civilian management. The intelligence activities of the armed forces, therefore, must remain strictly within the bounds of their constitutional functions. In the report submitted by the Secretary-General to the Security Council on 23 November 1993, it was noted that "it is not fully clear that the above provisions have been adequately complied with and ONUSAL is pursuing this matter with the Government" (see S/26790, annex, para. 14).

5. The National Civil Police

124. In the seventh report to the Secretary-General it was noted that "the effective deployment of the new National Civil Police is an issue that affects not only public order but is also directly related to institutional conditions and to the fulfilment of the State's duty to guarantee and protect human rights. The maintenance of law and order must not be used as an excuse to suppress basic freedoms and human rights. On the contrary, it must guarantee the enjoyment of such freedoms and rights. However, human rights cannot be enjoyed in the absence of law and order. Hence the importance given by the agreements to the deployment of a modern police force that can guarantee the security of the citizenry within the framework established by the law" (A/47/968-S/26033, annex, para. 304).

125. The Human Rights Division believes that the current public security situation of El Salvador should be seen from this viewpoint. It reflects a dual task, indicating two clear commitments for the Government: the need to reverse the disturbing rise in the indicators for common violence and insecurity among the citizens, which demands that the State take appropriate and effective measures to fight crime, and the obligation arising from the peace agreements to disband the National Police and to deploy the National Civil Police throughout the entire country, following the procedures and requirements stipulated in the agreements.

126. Faced with this complex situation, characterized on the one hand by an increase in crime which affects law and order and, on the other, by the need to proceed as scheduled with the disbanding of the National Police and the deployment of the National Civil Police. The Human Rights Division feels duty-bound to point out that the pressing need to resolve problems of security must not lead to any change in the purpose for which the National Civil Police was established, namely, to be a force responsible for the maintenance of public order within the context of the rule of law and guided by the principle of service to the public.

127. In the context of the new institution, crime control requires a major effort on the part of the State to adopt comprehensive, fundamental and well-planned measures to strengthen the National Civil Police so that they can fully carry out the duties entrusted to them in the peace agreements by the nation as a whole: to ensure public security as defined within the context of democratic

values and bearing in mind its essential relationship to the protection and defence of human rights and the rule of law.

128. Thus, to have members of the National Police and the former State security forces join the National Civil Police without strictly complying with the procedures stipulated in the agreements, not only violates the provisions of the peace agreements, but threatens to change the new institution's functions. Moreover, it should be pointed out that having former members of the armed forces in the National Civil Police could be dangerous in that it could alter the essentially civilian nature of that force and transfer old national security doctrines to the new public security agency, thereby tainting training in the new doctrine and leading to the use by the police of unlawful practices.

129. The Human Rights Division has repeatedly emphasized the need to provide the National Civil Police with greater technical and human resources to make up for its shortcomings in the area of prevention - an area that needs to be developed - which are evident above all in the lack of adequate patrols and investigation. Technical training and access to material resources suited to crime prevention are essential in order to eradicate crime.

130. Even more disturbing than the lack of resources is the increase in the number of complaints of human rights violations which, upon verification, are found to be true, and for which members of the National Civil Police are responsible. Most complaints received relating to the National Civil Police arise from arbitrary practices such as searches without court orders or arbitrary detention of citizens. One of the principal causes for this appears to be the transfer to the National Civil Police of members of the former State security forces and armed forces, often in positions of responsibility, and inadequate training of members of the National Civil Police.

131. These problems are becoming more serious, due to some actions that would appear to be indicative of inadequate internal controls. Personnel based at distant posts appear to act with little supervision by their respective sub-commanders; likewise, departmental authorities are not always monitored by their superiors in San Salvador; thus it is very difficult to develop effective means of internal control to bring police conduct into conformity with the law. In that respect, the Human Rights Division notes that failure to control police activities, and the impunity that this commonly implies, has traditionally led to human rights violations by the police in El Salvador, and they should, therefore, be noted and eliminated once and for all.

132. One disturbing and glaring deficiency that has been found in the verification conducted by the Human Rights Division is the lack of coordination and communication between the National Civil Police and the judiciary. For example, the National Civil Police are not in the habit of going to court to obtain detention orders, indicating a persisting need for better understanding on the part of members of the National Civil Police that, in a State subject to the rule of law, their institutional role in ensuring public safety and fulfilling their responsibilities as an auxiliary body of the administration of justice will be effective only within the context of the judicial and institutional system as a whole, and that they must, therefore, scrupulously

respect and observe their obligations under the law towards other institutions, as the best means of ensuring their effectiveness as guardians of law and order.

133. These deficiencies adversely affect the institution itself, as in the case of a search conducted by the National Civil Police on 28 January in Ozatlán, Usulután, during which one of their officers was killed. Between 4 and 4.30 a.m., eight National Civil Police officers, some in civilian clothes, went to the home of Mrs. María Berta Flores in Ozatlán, for the purpose of conducting a search for weapons. Without identifying themselves, they surrounded the house. One of the residents, José Israel Campos Montoya, believing that he was being assaulted, surprised one of the officers and wounded him in the head with a scythe; he then seized the officer's weapon and shot and killed him. The operation continued without positive results. The actions of the National Civil Police in this case were deficient on several counts: the search was conducted without a court order, in the middle of the night, with officers dressed in civilian clothes who failed to identify themselves.

134. As a result of this serious incident, the National Civil Police has begun to take some corrective measures. The Human Rights Division has been assisting in those efforts through the development of a series of criteria for strengthening the operating efficiency of the National Civil Police, so that while fulfilling its duty of ensuring public safety it may also win the public's confidence; this is possible only when the procedures it employs in the conduct of its duties are strictly in accordance with the law.

135. These observations have been made with the intention of contributing to the proper compliance with the agreements concerning the National Civil Police; despite the problems identified, the latter continues to have a very positive impact both as regards its security functions and as regards its general relations with the population.

III. ANALYSIS OF THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE HUMAN RIGHTS DIVISION

136. In the eighth report, the Director of the Human Rights Division assessed the implementation of the Division's recommendations with a view to helping to remove some of the remaining constitutional and legal obstacles to the protection of human rights.

137. This report will seek to update that assessment not only because some time has elapsed but also, and in particular, because given the present stage of the peace process and the evolution of the human rights situation, the political community views the implementation of the recommendations of the Human Rights Division and the Commission on the Truth as crucial to the further legal development of procedures for constitutional and legal protection.

138. A status report on the implementation of the recommendations is given below.

A. Recommendations involving constitutional reforms

139. The Division's recommendations concerning the structural and functional reform of the judiciary and amendments to the regulations governing the remedies of habeas corpus and amparo would entail constitutional reform. There are two substantive aspects to these reforms. First, there is the decentralization of the functions of the Supreme Court of Justice, which involves transferring authority for appointing and removing justices of the peace, judges of first instance and magistrates to the National Council of the Judiciary and making an independent body responsible for authorizing lawyers and notaries to practise as such and suspending them. Second, there are the constitutional amendments, whereby judges of first instance would be competent to deal with issues of habeas corpus and amparo.

140. The President of the Republic duly sent a message to the Legislative Assembly requesting it to consider those recommendations of the Commission on the Truth involving constitutional amendments - which echo and endorse the recommendations of the Human Rights Division. In accordance with the Constitution of El Salvador, a constitutional amendment must be petitioned by a minimum of 10 legislators and the procedure for adopting it extends over two legislative sessions.

141. ONUSAL believes that the implementation, during the legislative session ending on 30 April, of the constitutional amendments concerning decentralization of the power of the Supreme Court of Justice is a key and decisive element in the judicial reform process in El Salvador. Without a truly independent judiciary, whose administrative structure does not compromise the judges' freedom and independence of judgement and the lawyers' action, the entire legal reform effort being promoted by the Ministry of Justice itself would be devoid of meaning. Modern legislation which provides basic guarantees of human rights cannot be effective if it is administered by a judiciary which has the power to influence the conduct of judges and lawyers either directly or indirectly. In this context, it is equally important to carry out reforms aimed at making the remedy of habeas corpus effective and easily accessible to the citizens by giving judges of first instance and justices of the peace competence to hear such remedies.

142. In this context, it would seem self-evident that the success of all the efforts being made in the legislative sphere will depend on the existence of the political capacity to promote the independence and effectiveness of the judiciary through constitutional reform, which thus becomes an urgent and immediate task. ONUSAL believes that, although the current Legislative Assembly is about to conclude its activities, it should initiate a constitutional reform process that would culminate during the first session of the new Legislative Assembly to be installed on 1 May 1994.

B. Recommendations which do not involve constitutional amendments

1. Establishment of a special commission of inquiry to investigate arbitrary and extra-legal executions

143. In the wake of the assassinations of FMLN leaders in October and November 1993, the Government decided to establish an Interinstitutional Investigation Commission headed by the Minister and Chief of Staff in the office of the President and composed of representatives of the Office of the Attorney-General, the National Civil Police, the Criminal Investigation Commission, the State Intelligence Agency and the Presidential Commissioner for Human Rights. This Commission worked on the investigation into the cases of Eleno Castro, Ernesto Vélis and Mario López and continues to assume responsibility for the investigation of other assassinations of political leaders or attempted arbitrary executions, such as the attempt on the life of national FMLN leader Marta Valladares (Nidia Díaz). ONUSAL is monitoring the investigations being conducted by the Interinstitutional Commission. The existence of a special entity to investigate cases of assassinations of political leaders in which not only must the possibility of political motivation not be ruled out a priori, but be given serious consideration, is certainly a major improvement over the former situation. The fact that, in the investigation of some of these cases, advice was sought from investigators belonging to prestigious foreign investigation bureaus, is added proof that there is a political will which recognizes the need for effective and independent investigation.

144. However, as indicated in the ninth report of the Human Rights division and without prejudice in any way to the outcome of the investigations being conducted by the Interinstitutional Commission, "the Human Rights Division feels constrained to point out that the composition of the Commission does not necessarily reflect the desired independence of judgement. There is, for example, the involvement of the political power of the State in the bodies legally responsible for criminal investigation, while the Office of the National Counsel for the Defence of Human Rights, which has broad constitutional powers to investigate human rights violations on a quasi-jurisdictional basis, is not represented. In that connection, the Secretary-General reported to the Security Council on 29 October that the Interinstitutional Commission 'did not meet the United Nations criteria for the investigation of summary executions' (S/26790, para. 11), but that, in compliance with its observation function, ONUSAL has none the less been closely following the work of the subgroup" (A/49/59-S/1994/47, annex, para. 23).

2. Ratification of or accession to international instruments, including the Conventions of the International Labour Organization mentioned in the sixth report

145. In compliance with this recommendation, the executive branch has transmitted the relevant instruments to the Legislative Assembly for the adoption of the instruments of ratification and/or accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Additional Protocol to the American Convention on Human Rights in the Area

of Economic, Social and Cultural Rights (Protocol of San Salvador) and the Inter-American Convention to Prevent and Punish torture. The Legislative Assembly must adopt those instruments and thereby give full effect to the recommendation concerning them. They should be adopted before the end of the current legislative session.

146. A similar constructive attitude must be taken towards the Optional Protocol to the International Covenant on Civil and Political Rights and recognition of the compulsory jurisdiction of the Inter-American Court of Human rights. Such recognition is essential if El Salvador's participation in international mechanisms for the protection of human rights is to comply with international standards and be consistent with the spirit that informs the peace process taking place in the country. There is no constitutional or legal impediment to prevent El Salvador from recognizing the compulsory jurisdiction of the Court. This option would be available in addition to domestic jurisdictional remedies and is consistent with a broad view of the democratic system rooted in the very spirit of the Salvadorian Constitution, which affirms the functional principle of non-exclusion from national and international protection mechanisms.

147. The Forum for Economic and Social Consultation has decided to ratify 14 of the ILO conventions. Those procedures should be completed in the immediate future.

3. Establishment of a compensation fund for victims of human rights violations

148. This recommendation is vital to the firm establishment of a culture of peace and reconciliation. The compensation of victims of human rights violations is not only a matter of ethics, justice and equity but is also necessary for establishing credibility in the administration of justice. Finally, it would demonstrate genuine political will in respect of the task of reconciliation. The Human Rights Commission of El Salvador (CDHES) submitted a draft from a civilian standpoint which the Human Rights Division has characterized as a sound proposal and which could be the point of departure for legislative action. Unfortunately, the executive has made no progress at all in this regard and the Human Rights Division has not been informed of the results of the preliminary studies which the Government told ONUSAL it had launched several months ago. The Human Rights Division believes that it is essential for the Government authorities to submit the appropriate draft legislative decree to the Legislative Assembly. Given the nature of the institution to which the regulations would apply, a national consensus should be sought on the text.

4. Improvement of the composition and powers of the National Council of the Judiciary and independence of the Judicial Training School

149. The National Council of the Judiciary and the Supreme Court of Justice each submitted preliminary bills to the Legislative Assembly which, at least on paper, appear to be aimed at implementing the recommendation. However, despite

some of their positive provisions, these preliminary bills do not comply with the substantive aspects of the recommendation, namely, granting the National Council of the Judiciary authority to appoint and remove judges and magistrates. In that sense, this recommendation has not been implemented and cannot be said to be in the process of being implemented, for, as has already been indicated, that would require a constitutional amendment.

5. Elimination of extrajudicial confession

150. As indicated in the eighth report, the provisions of the new Public Defender's Act and the amendments already introduced in the Code of Criminal Procedure and the Act organizing the Public Prosecutor's Office have virtually eliminated from the legislation any legal possibility of using extrajudicial confession. However, as its express abolition is necessary, the Ministry of Justice has submitted to the Legislative Assembly a draft legislative decree abolishing extrajudicial confession. Although some time has elapsed since the submission of this proposal, the Legislative Assembly has not yet adopted it. It is essential that it be adopted before the end of the current legislative session. COPAZ has a special responsibility in this connection.

6. Definition of torture and enforced disappearance as offences in special criminal legislation

151. The executive branch has added these two violations to the offences defined in the preliminary bill of the new Penal Code. The public has now been consulted on the text of the new code. The Ministry of Justice, according to the methodology used to promote the initial reforms, is all set to submit the draft legislative decree for adoption by the current Legislative Assembly.

7. Legislation regulating the conduct of law enforcement officials in terms of ensuring respect for human rights

152. This recommendation has been incorporated in a draft legislative decree elaborated by the Ministry of Justice, which gives legal effect to the provisions of the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly of the United Nations. Accordingly, the draft text is eminently satisfactory. It has been transmitted by the executive branch to the Legislative Assembly for adoption, but no action has been taken yet. Its adoption by the Assembly is of the utmost importance.

8. Abolition of the practice of arbitrary detention for petty misdemeanours

153. Beyond the efforts made by ONUSAL, the National Police and the National Civil Police to reduce the number of arbitrary detentions for petty misdemeanours, which have had uneven results, implementation of this

recommendation means repealing the 1886 Police Act, transferring jurisdiction over petty misdemeanours to the judicial authorities and expressly regulating the powers and functions of the Municipal Police, which should not be competent to make arrests and determine punishment for petty misdemeanours. It is regrettable that there has been no initiative thus far to abolish the 1886 Police Act outright. This should be done in the immediate future.

9. Temporary application of the Act governing the procedure for administrative detention or the imposition of administrative fines

154. This recommendation is linked to the preceding one, as a temporary means of reducing the high incidence of arbitrary detentions for petty misdemeanours. Since March 1993, the National Police and, subsequently, the National Civil Police have been following a set of instructions on petty misdemeanours which brings the law into compliance with the recommendation. The instructions seek to have the police force apply the "Act governing the procedure for administrative detention or the imposition of administrative fines" (Decree No. 457) in place of the obsolete provisions of the 1886 Police Act or illegal procedures. Despite the efforts made and the measure of progress achieved, its application is still incomplete.

10. Visit by the ILO Committee on Freedom of Association

155. This recommendation has been fully implemented. Professor José Vida Soria headed the ILO mission of direct contact which visited El Salvador between 27 September and 1 October 1993 within the framework of the activity of the Committee on Freedom of Association. In its report to the Committee, the mission pointed out that it had also found that following the recent establishment of peace (January 1993), there was a real desire by all to put the past behind them, and that, in fact, the main concern was not to dwell on the past but rather to build the present and the future without minimizing the seriousness of the past situation. The report went on to say that the mission had found a society attempting to forget the past through the use of its freedom of expression, its capacity for dialogue and its other democratic freedoms, and that, in that connection, the activities of the United Nations and, in particular, those of ONUSAL could not be overlooked.

156. The implementation of this recommendation has been beneficial to both the Government and to labour and management. Additionally, it has helped to overcome a number of obstacles which had been mounting for many years in the relationship between the Salvadorian State and ILO, with obvious negative effects on the interrelationship between domestic and international labour law. Referring to the new situation that has emerged with the implementation of the recommendation, the mission of direct contact pointed out that in any case, the country and ILO could be said to have entered a new phase in their relationship, as evidenced by the fact that the Forum for economic and Social Consultation had approved ratification of 14 major ILO Conventions and had promised to submit them to the Legislative Assembly, that the mission was permitted to visit and

that the Government had provided it with substantial information concerning the alleged acts.

11. Legal recognition of associations and trade unions

157. By its very nature this is an ongoing recommendation, and refers to the State's responsibility to apply the law on a non-discriminatory basis and to respect pre-established procedures and deadlines in dealing with all applications for legal recognition, particularly from trade unions, associations and non-governmental organizations. During the period covered by this report, commendable progress has been achieved in this respect, for example, the legal recognition, on 10 December 1993, of the Fundación para la Autogestión y Solidaridad de los Trabajadores Salvadoreños (FASTRAS).

158. Beyond these successful cases, it seems necessary to make some effort to go beyond case-by-case treatment of non-governmental organizations (NGOs) and establish a legal framework and procedure that would provide legal safeguards in connection with the legal requirements and procedures for their establishment. This implies the need to elaborate and adopt a law establishing procedures for the legal recognition of non-governmental organizations. The Ministry of the Interior could also brief NGOs regularly in order to ensure that they have a clear understanding of the required procedures and that they avoid situations which, in practice, affect the legitimate interest of NGOs seeking legal recognition within the framework of a pre-established, efficient procedure. The NGOs themselves should be consulted in the elaboration of the above-mentioned legal procedures.

12. Budget autonomy for the Office of the National Counsel for the Defence of Human Rights

159. The implementation of this recommendation is related to the need to allow the Office of the National Counsel for the Defence of Human Rights, which is currently part of the Public Prosecutor's Office, greater autonomy. However, this would entail a constitutional amendment. The Office of the National Counsel is drawing up a proposal that would ensure it an acceptable degree of autonomy and effectiveness in the use of its budgetary resources, without resorting to constitutional reforms for the time being.

13. Preliminary bill relating to the Penal Code, the Code of Criminal Procedure and the prison act

160. In accordance with the methodology used by the Ministry of Justice for its legislative initiatives, the preliminary bills on both the prison act and the Code of Criminal Procedure are awaiting Government approval. Consultation of the public on the preliminary bill concerning the Penal Code has been in progress since January 1994. These processes, which are undoubtedly vital, should not, however, delay the submission of preliminary bills to the current Legislative Assembly for adoption at the earliest possible date. In that

connection, it would be useful to establish a timetable for the consultation processes on these preliminary bills, and for their approval by the President and submission to the Legislative Assembly before the Assembly concludes its activities on 30 April 1994.

14. Amendments to the Career Judicial Service Act

161. A Commission was established within the Legislative Assembly to study amendments to the Career Judicial Service Act. Thus far, it has not submitted any findings. This is disturbing, for the suggestions made by the Human Rights Division and the Commission on the Truth in this area are crucial to the integrity of the judicial branch in El Salvador.

IV. CONCLUSIONS

162. The evolution of the human rights situation during the four-month period covered by this report (November-February) does not present all the characteristics of deterioration that were evident during the period immediately preceding it (August-October) and conforms more to the trends described in previous reports. This seems to confirm the general theory that clear responses which express a political will to investigate complaints are the best way to dispel or confirm suspicions of human rights violations. At the same time, they are the chief deterrent to human rights violations. In order to give unequivocal expression to such capacities, it will be necessary, however, to do something about impunity, which is still very much a reality both in police inquiries and in most judicial proceedings.

163. The active verification carried out by the Human Rights Division into the acts of violence perpetrated by organized criminal groups many of which are composed of former members of the armed forces and former FMLN combatants, appears to confirm the theory that some of the crimes against individuals who are or have been linked to FMLN or the army, are politically motivated. In many of the violent acts that occurred during the period of conflict, the victims were able to identify the perpetrators; it could therefore be concluded that as a direct consequence of the war, crimes with a private political component are being perpetrated to settle scores.

164. The right to life is still the most vulnerable category. While violations of the right to life during the period, covered by this report do not reflect the same characteristics as those that were verified during the previous period, arbitrary executions and attempted arbitrary executions still account for the majority of complaints received. The inability of the investigations branch of the police to apprehend those responsible and the subsequent inability of the judiciary to punish them, continue to be a fundamental reason for the high incidence of violations of the right to life and especially of the sense of impunity that continues to prevail.

165. During the period covered by this report, complaints of death threats continued to increase. This serious situation could be directly related to the

high rates of ordinary crime - especially crimes of extortion involving money - that characterized the previous period. However, the only explanation for many of these crimes appears to be that they are politically motivated. This is especially true of a large number of complaints that seem to be closely tied in with the electoral campaign.

166. The active verification carried out during the period covered by the report, has clearly established the fact that the National Police continues to carry out many of its activities in flagrant breach of legality and in violation of human rights as reflected by the statistics included in this report. That notwithstanding, the new Director of the National Police has adopted crucial measures to deal with that serious situation and to shake the commanding officers from their lethargy. While the Human Rights Division hails the policy imposed by the new Director of the National Police since 1 January, it would like to reiterate the need to fulfil the commitment established under the peace agreements to completely disband this security body and to deploy the National Civil Police throughout the country within the deadlines provided for in the agreements.

167. The Human Rights Division has repeatedly complained about the seriousness of the situation with regard to ordinary violence. It has also warned about the possible links between ordinary violence and human rights violations, and about factors that contribute to violence which are linked to the non-fulfilment, delay in or partial fulfilment of commitments stemming from the peace agreements. Nevertheless, the actions taken by the Government to deal with crime appear to play down such warnings and tend to continue the policy of prolonging the existence of the National Police whose activities in respect of public security not only have not produced satisfactory results, but have also failed to stem the increase in ordinary violence especially in those areas where the National Civil Police has not yet been deployed.

168. The systematic practice of arbitrary detention in El Salvador - particularly administrative detention for petty misdemeanours, which are a violation of the principle of legality, a violation of the right to minimum procedural guarantees or which are carried out by bodies that are not specifically authorized by law to do so - can only be stopped by abrogating the 1886 Police Act, transferring jurisdiction for misdemeanours to the courts and by clearly regulating the power of auxiliary bodies to carry out such detentions.

169. The incidents of violence that occurred during the period covered by the report in the San Francisco Gotera, Sensuntepeque and Santa Ana penitentiaries have highlighted the serious crisis in El Salvador's penitentiary system and the failure of the prison authorities to carry out their duty to provide guarantees regarding human rights. These events also underscore the need to modernize the prison system as soon as possible and to allocate more resources to that sector. In that connection, the consideration and adoption of the prisons bill is an urgent task.

170. In the last few months, the National Civil Police has no doubt had a positive impact on the human rights situation in those areas where it has been

deployed. However, it is essential that the shortcomings that have been identified during the active verification concerning, basically, the process whereby its members are selected, the inadequacy of resources and the inadequate training in police procedures that leads to arbitrary practices, be corrected promptly.

171. The immediate implementation of the constitutional reforms relating to the decentralization of the Supreme Court of Justice is crucial to the independence that should be enjoyed by the judiciary in El Salvador. In that respect, the Human Rights Division is of the opinion that it is incumbent upon the current Legislative Assembly to initiate constitutional reforms that should be completed during the first session of the new Legislative Assembly to be installed on 1 May 1994.

Notes

1/ E/CN.4/Sub.2/1990/29.

Annex

Table No. 1

ANALYSIS OF THE SITUATION FOR THE PERIOD NOVEMBER 1993-FEBRUARY 1994
(TENTH REPORT TO THE SECRETARY-GENERAL)

COMPLAINTS DECLARED ADMISSIBLE BY ONUSAL

Complaints declared admissible	Nov.	Dec.	Jan.	Feb.	Total
VIOLATIONS OF THE RIGHT TO LIFE					
Arbitrary executions	18	15	8	14	55
Attempted arbitrary executions	4	2	0	6	12
Death threats	34	11	10	22	77
VIOLATIONS OF THE RIGHT TO INTEGRITY OF PERSON					
Torture	0	2	1	2	5
Ill-treatment	15	12	8	5	40
Excessive use of force	4	5	5	5	19
VIOLATIONS OF THE RIGHT TO SECURITY OF PERSON					
Enforced disappearances	1	1	1	0	3
Abductions	7	1	1	3	12
Other threats	22	11	11	3	47
VIOLATIONS OF DUE PROCESS OF LAW PROCEDURAL GUARANTEES					
Right to be tried by a tribunal within a reasonable period of time	4	3	5	5	17
Right to defence	0	3	1	0	4
Right not to be coerced	2	0	1	2	5
Right to judicial review	0	0	0	0	0
RIGHT TO JUSTICE					
Legal obligation of the State to investigate and punish	23	13	15	17	68
Right to compensation	0	1	1	0	2

Complaints declared admissible	Nov.	Dec.	Jan.	Feb.	Total
VIOLATIONS OF THE RIGHT TO PERSONAL FREEDOM					
Arbitrary detentions	15	11	5	7	38
Arbitrary detentions for petty misdemeanours	1	2	2	0	5
Procedural guarantees	10	3	3	1	17
VIOLATIONS OF THE RIGHT TO FREEDOM OF EXPRESSION	1	1	0	1	3
VIOLATIONS OF THE RIGHT TO FREEDOM OF ASSOCIATION					
Right to associate freely	1	2	0	1	4
Freedom of assembly	0	0	1	2	3
Trade union freedom	0	0	0	0	0
VIOLATIONS OF THE RIGHT TO IDENTITY DOCUMENTS					
To obtain personal identification documents	0	0	0	0	0
To obtain civil status documents	1	0	0	0	1
TOTAL	163	99	79	96	437

Table No. 2

COMPLAINTS DECLARED ADMISSIBLE BY CATEGORY OF RIGHT VIOLATED

NOVEMBER 1993-FEBRUARY 1994

(percentages)

Violation	Nov.	Dec.	Jan.	Feb.	Total
Life	34.36	28.28	22.78	43.75	32.2925
Integrity	11.66	19.19	17.72	12.50	15.2675
Security	18.40	13.13	16.45	6.25	13.5575
Due process	17.80	20.20	29.11	25.00	23.0275
Personal freedom	15.95	16.16	12.67	8.33	13.2775
Freedom of expression	0.61	1.02	0.00	1.04	0.6675
Freedom of association	0.61	2.02	1.27	3.13	1.7575
Personal documentation	0.61	0.00	0.00	0.00	0.1525
TOTAL	100.00	100.00	100.00	100.00	100.0000

Table No. 3

PERSONS PRESUMED RESPONSIBLE FOR VIOLATIONS

NOVEMBER 1993-FEBRUARY 1994

(Period covered by tenth report)

Persons presumed responsible	Nov.	Dec.	Jan.	Feb.	Total	Percentage
Members of national police	22	22	11	10	65	14.87
Irregular groups	5	2	5	12	24	5.49
Persons unknown	50	19	14	26	109	24.94
Members of municipal police	4	0	0	3	7	1.60
Members of national civil police	21	15	12	11	59	13.50
Members of armed forces	5	8	1	4	18	4.12
Public prosecutor's office	0	0	0	0	0	0.00
Administration	1	2	0	1	4	0.91
Judiciary	29	19	25	19	92	21.06
Anti-drug-trafficking unit	6	0	0	1	7	1.60
Criminal investigation commission	0	1	0	0	1	0.23
FMLN	6	3	1	1	11	2.52
Other	14	8	10	8	40	9.16
TOTAL	163	99	79	96	437	100.00

Table No. 4

STATISTICAL ANALYSIS OF TRENDS OVER THE PERIOD JANUARY-DECEMBER 1993

COMPLAINTS DECLARED ADMISSIBLE BY ONUSAL

Complaints declared admissible	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
VIOLATIONS OF THE RIGHT TO LIFE													
Arbitrary executions	12	15	6	11	11	16	16	10	14	13	18	15	157
Attempted arbitrary executions	2	1	2	3	3	1	5	2	4	4	4	2	33
Death threats	8	19	17	11	6	9	25	17	27	7	34	11	191
VIOLATIONS OF THE RIGHT TO INTEGRITY OF PERSON													
Torture	0	2	0	1	1	1	0	0	4	0	0	2	11
Ill-treatment	15	21	28	12	11	15	16	9	21	9	15	12	184
Excessive use of force	3	4	6	7	2	5	10	6	5	1	4	5	58
VIOLATIONS OF THE RIGHT TO SECURITY OF PERSON													
Enforced disappearances	0	3	0	1	0	1	0	1	1	1	1	1	10
Abductions	2	0	3	2	1	0	4	5	1	0	7	1	26
Other threats	8	9	14	15	14	16	16	14	14	15	22	11	168
VIOLATIONS OF DUE PROCESS OF LAW PROCEDURAL GUARANTEES													
Right to be tried by a tribunal within a reasonable period of time	0	0	0	0	1	0	1	0	0	0	4	3	9
Right to defence	8	12	2	6	4	4	5	2	3	4	0	3	53
Right not to be coerced	3	8	1	3	2	2	2	2	1	4	2	0	30
Right to judicial review	1	6	1	1	0	1	2	6	2	4	0	0	24
RIGHT TO JUSTICE													
Legal obligation of the State to investigate and punish	4	17	30	27	25	28	24	7	29	25	23	13	252
Right to compensation	0	1	0	0	0	0	1	0	0	1	0	1	4
VIOLATIONS OF THE RIGHT TO PERSONAL FREEDOM													
Arbitrary detentions	16	16	10	17	31	25	18	12	24	32	15	11	227
Arbitrary detentions for petty misdemeanours	5	16	9	6	5	5	8	9	6	5	1	2	77
Procedural guarantees	5	4	2	2	2	11	2	3	0	4	10	3	48

Complaints declared admissible	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
VIOLATIONS OF THE RIGHT TO FREEDOM OF EXPRESSION	0	3	0	2	1	0	0	0	1	0	1	1	9
VIOLATIONS OF THE RIGHT TO FREEDOM OF ASSOCIATION													
Right to associate freely	3	2	5	2	3	2	1	3	2	2	1	2	28
Freedom of assembly	1	0	1	0	0	0	0	0	0	0	0	0	2
Trade union freedom	1	0	0	0	3	1	0	1	2	1	0	0	9
VIOLATIONS OF THE RIGHT TO IDENTITY DOCUMENTS													
To obtain personal identification documents	0	1	0	0	0	0	0	0	1	1	0	0	3
To obtain civil status documents	0	0	2	1	0	0	0	0	1	0	1	0	5
Total	97	160	139	130	126	143	156	109	163	133	163	99	1 618

Table No. 5

COMPLAINTS DECLARED ADMISSIBLE BY CATEGORY OF RIGHT VIOLATED

JANUARY-DECEMBER 1993

(percentages)

Violation	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
Life	22.40	21.80	17.99	19.23	15.87	18.10	29.50	26.61	27.60	18.05	34.36	28.28	23.327
Integrity	18.30	16.80	24.46	15.38	10.36	14.70	16.70	13.76	18.40	7.52	11.66	19.19	15.615
Security	10.20	7.50	12.23	13.85	11.90	11.90	12.80	18.35	9.82	12.03	18.40	13.13	12.676
Due process	16.30	27.50	24.46	28.46	25.40	24.50	22.50	15.60	21.40	28.57	17.80	20.20	22.733
Personal freedom	26.50	22.50	15.11	19.23	30.95	28.70	17.90	22.02	18.40	30.83	15.95	16.16	22.023
Freedom of expression	0.00	1.88	0.00	1.54	0.79	0.00	0.00	0.00	0.61	0.00	0.61	1.02	0.538
Freedom of association	6.12	1.25	4.32	1.54	4.76	2.10	0.64	3.67	2.45	2.26	0.61	2.02	2.645
Personal documentation	0.00	0.63	1.44	0.77	0.00	0.00	0.00	0.00	1.23	0.75	0.61	0.00	0.453
Total	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.000

Table No. 6

PERSONS PRESUMED RESPONSIBLE FOR VIOLATIONS

JANUARY-DECEMBER 1993

Persons presumed responsible	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total	Percentage
Members of national police	35	53	65	41	53	51	61	36	49	33	22	22	521	32.46
Irregular groups	1	1	4	5	12	5	10	2	3	5	5	2	55	3.42
Persons unknown	13	20	11	16	12	15	24	19	31	15	60	19	245	15.11
Members of municipal police	9	11	4	3	4	6	4	6	4	2	4	0	57	3.54
Members of national civil police	0	0	1	2	0	4	3	3	5	20	21	15	74	4.35
Members of armed forces	5	24	11	10	5	7	10	6	7	3	5	8	101	6.28
Public prosecutor's office	0	1	0	1	0	0	1	0	0	0	0	0	3	0.19
Administration	5	1	2	1	0	2	1	0	8	1	1	2	24	1.49
Judiciary	14	21	20	33	29	34	29	14	32	34	29	19	308	18.97
Anti-drug-trafficking unit	0	3	0	4	0	4	0	5	6	5	6	0	33	2.05
Criminal investigation commission	0	0	0	0	0	0	0	0	1	2	0	1	4	0.25
FMLN	3	5	4	2	6	8	3	5	2	0	6	3	47	2.86
Other	12	20	17	12	5	7	10	13	15	13	14	8	146	9.03
Total	97	160	139	130	126	143	156	109	163	133	163	99	1 618	100.00